IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3122 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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ARUN ASHARAM PANDYA

Versus

STATE OF GUJARAT

Appearance:

MR MD RANA for Petitioner.

Mr. Sudhir Mehta, AGP for Respondent.

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 20/07/2002

ORAL JUDGEMENT

The petitioner, in this petition under Article 226 of the Constitution of India, has prayed for relief in respect of continuing him in service till the age of 60 years in accordance with the Junagadh State Superannuation Rules.

2. The brief facts, giving rise to the present petition, are that the petitioner joined the Police

Department as Constable in the year 1948. At that time, the Junagadh State was an independent princely sovereign State headed by the Nawab of Junagadh. After the partition of the country the Nawab went to Pakistan and the Junagadh State territory came under the rule of Council of Administration. The princely States were classified as Class-I to Class VII according to British Government. They were all integrated and the newly formed unit of Saurashtra came into existence on and from 15.4.1948 where the Jam-Saheb of Navanagar came to be the Raj Pramukh as the Constitutional Head of the State. At the time of integration, there was a covenant between the integrating States and the Raj Pramukh as well as the Secretary on behalf of the Union of India, under which the staff of the States had to be absorbed but the conditions of service were not to be less advantageous.

3. It is further stated by the petitioner in the petition that even after the formation of the Saurashtra State, Junagadh State remained independent but ultimately somewhere in July 1949 it was also integrated with Saurashtra and there was a covenant between the Raj Pramukh and the Council of Administration. It is further submitted that thereafter the Government of India issued certain orders or directives containing, inter alia, that the guarantee of service even in the covenant was a matter of assurance and was a commitment which was to be abided by. It is further submitted by the petitioner that the petitioner was absorbed in Saurashtra State and continued in service. The Saurashtra State merged with Bombay State on 1.11.1956 under the provisions of State Reorganisation Act. Under Section 115(7), the service condition could not be changed without the prior approval of the President of India. On and from 1-5-1960 the State of Gujarat came into existence under the Bombay Reorganisation Act and under Section 81(6) the service condition could not be changed without the approval of the President of India. The petitioner therefore submitted that the petitioner carried the right to continue in service till 60 years of age on account of integration and reorganisation of States.

4. The petitioner further submitted that under the guarantee of service the petitioner ought to have been continued till he attained 60 years in 1987 but the petitioner was compelled to retire at the age of 58 in 1985. The said retirement at an early date was illegal and unconstitutional and hence he sought for the declaration in this petition and also claimed that he was entitled to the benefits at the revised rate considering the age of retirement of the petitioner at 60 years.

5. When the petitioner came to know about certain legal proceedings filed by various employees, the present petition was filed by the petitioner before this Court. At the time of admission of this petition, it was brought to the notice of this Court that Special Civil Application No. 703 of 1989, which involved identical question, was admitted by this Court and on that basis the Rule was ordered to be heard along with Special Civil Application No. 703 of 1989. Though appearance was filed on behalf of the respondent authorities, no affidavit-in-reply is filed till this date.

6. Heard Mr. M.D. Rana, the learned advocate appearing for the petitioner and Mr. Sudhir Mehta, the ld. Asst. Govt. Pleader appearing for the respondent. At the time of hearing of this petition, my attention is drawn to the decision of this Court in Special Civil Application No. 703 of 1989 and other two cognate matters bearing Special Civil Application No. 3025 of 1989 and Special Civil Application No. 2307 of 1990. All the three petitions were decided by this Court on 11.6.2001. While disposing of the said three petitions, this Court has observed that a similar matter has been decided by this Court [Coram: S.K. Keshote, J.] vide judgment dated 20th January 2001 disposing of Special Civil Applications No. 2691 of 1989, 5124 of 1990, 1556 of 1990 and 6352 of 1996. It has been further observed as under :

> "The judgment of civil court is not binding on this court. The judgment given by the Civil Court is binding in between that person and the State Government and rightly the benefit has been given to that person. However, the learned counsel for the respondents have failed to produce on the record of these Special Civil Applications that the service condition, the age of retirement of 60 years was not there of the employees of the ex-Junagadh State. The learned counsel for the respondents has also failed to produce on that record any evidence to show that the service condition of the servants of the ex-Junagadh State has been changed with prior approval of the Central Government. Out of these four petitions, in two petitions, reply to the special civil application has not been filed. So far as two other special civil applications are concerned, reply has been filed and therein only defence has been taken that those petitions have

given in writing to the respondents, an undertaking, to be governed by Bombay Civil Service Rules, 1959. I find that those two petitioners have given undertaking in writing to be governed by Bombay Civil Service Rules. However, in the reply, it is not the case of the respondents that their service conditions have been changed with prior approval of the Central Government. Nothing has been stated also so far as the case of Shri T.K. Budhecha is concerned."

7. While disposing of those petitions, this Court has passed the following order :

"In the result, these Special Civil Applications are disposed of in the terms that these petitions be considered as representations of the petitioners by the Chief Secretary of the State of Gujarat and he may place the same for consideration and decision of the high power committee to be constituted under his Chairmanship with three other members, i.e. Secretary, Finance Department, Secretary, Home Department and Secretary, Law Department. The matters are to be decided by the said committee within a period of three months from the date of receipt of writ of this order. If the petitions or any of the petitioners desire opportunity of personal hearing, it may be afforded accordingly. Where the claim of the petitioners is acceptable, they shall be entitled for all consequential benefits which are to be determined and paid to them within two months next together with interest thereon @ 12% p.a. from the due date. Where the claim of the petitioners are not acceptable, a reasoned order be passed and a copy of the same be sent to the petitioners by registered post A.D. In case where the order of the high power committee goes adverse to the petitioners, liberty is granted to them for revival of these special civil applications. Rule and Special Civil Applications stand disposed of accordingly with no order as to costs."

8. In view of the above directions, the subsequent three petitions were disposed of by this Court on 11.6.2001 giving suitable directions in the matter. Considering the orders passed by this Court in two group of petitions namely Special Civil Application No. 2691

of 1989, 5124 of 1990, 1556 of 1990 and 6352 of 1996 decided on 20.1.2001 and another group of petitions bearing Special Civil Applications No. 703 of 1989, 3025 of 1989 and 2307 of 1990 decided on 11.6.2001, I am of the view that interest of justice would be met if I give similar directions to the respondent authorities in the present petition. I accordingly direct that the present petition may be considered as a representation of the petitioner by the Chief Secretary of the State of Gujarat and that the Chief Secretary may place the same for consideration and decision of the high-power Committee to be constituted under his chairmanship. If the petitioner desires personal hearing, the same may be given to him and the matter shall be decided in terms of the judgment and order passed by this Court on 20.1.2001 in Special Civil Applications No. 2691 of 1989, 5124 of 1990, 1556 of 1990 and 6352 of 1996.

9. Subject to the aforesaid direction, the present petition is disposed of. Rule is made absolute to the above extent and there would be no order as to costs.

rmr. [K.A. Puj, J.]